

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
To: The Commission		

REPLY COMMENTS

Of

SPOT ON NETWORKS, LLC

Spot On Networks, LLC (“Spot On”) by and through its attorney and pursuant to the Commission’s Rules, hereby files its REPLY COMMENTS in response to the Commission’s March 2, 2017 Public Notice¹ in the above captioned matter requesting Comments and Reply Comments concerning Spot On’s Application for Review.

In support whereof the following is averred:

I. THE 2016 LIFELINE MODERNIZATION ORDER IS IN EFFECT

The FCC’s 2016 Lifeline Modernization Order,² established new rules for federally designating LBPs eligible to receive reimbursement through the Lifeline program. Spot On filed its petition for LBP designation on October 27, 2016 and met all of the requirements for

¹ DA 17-212 (released March 2, 2017).

² See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, (2016) (*2016 Lifeline Modernization Order*).

streamlined ETC designation. This was confirmed by the December 1st Order (the “December 1st Order”).³

The National Association of Regulatory Commissioners (“NARUC”) argues, in Comments filed March 16, that multiple petitions were filed seeking reconsideration of the Lifeline Modernization Order (“Petitions for Reconsideration”) and that, somehow, the fact that those petitions are still pending is justification for the Acting Chief, Wireline Competition Bureau to have issued her February 3rd Order on Reconsideration (the February 3rd Order)⁴. However, NARUC’s argument holds no water

The Petitions for Reconsideration challenged the Commission’s adoption of the new rules set forth in the 2016 Lifeline Modernization Order. However, those new rules remain in effect, as they were adopted. Those rules have not been stayed by the Commission.

The Acting Chief’s February 3rd Order on Reconsideration also did not change any of the rules adopted by the 2016 Lifeline Modernization Order. Those rules are still in effect; and, Spot On is entitled to the benefit of those rules.

II. A SEPARATE PROCEEDING IS NEEDED TO REMOVE SPOT ON’S DESIGNATION OF LBP STATUS

In its Application for Review, Spot On argues its designation as a LBP provider has become final and now can not be upended without the commencement of a separate proceeding.

In its Comments, NARUC argues that the Commission should deem the Wireline Competition Bureau’s March 2nd invitation for the public to file Comments and Reply Comments

³ DA 16-1325 (released December 1, 2016)

⁴ *Order On Reconsideration*, WC Docket Nos. 09-197 and 11-42, DA 17-128 (released February 3, 2017).

on Spot On's Application for Review⁵ to be the separate proceeding desired by Spot On.

NARUC says:

Assuming *arguendo*, the FCC determines this Spot On argument has any merit, NARUC respectfully requests that the full Commission deem this comment cycle as just such a separate proceeding. (emphasis added) (at 9)

However, "this comment cycle" can not and should not be the separate proceeding.

Fundamental due process requires that *before* Spot On can be sanctioned and have its status as a designated LBP be removed, Spot On is entitled to notice as to why it is being sanctioned and a meaningful opportunity to be heard.

The December 1st Order acknowledged that separate procedures were available to the Commission which the Commission could use in the event the Commission desired to revoke Spot On's LBP designation. The Order observed that in the event Spot On fails to comply with Communications Act, the Commission's rules, or the December 1st Order the Commission has the authority to revoke Spot On's LBP designation. The December 1st Order said:

Pursuant to the LBP requirements and the Commission's authority to revoke designations in the case of non-compliance with the Act, Commission rules, or the order granting designation,⁶ Petitioners must comply with sections 214(e) and 254 of the Act, accompanying Commission's rules, and the representations and commitments made in their petitions, as set forth in this Order.(emphasis added) (at 8)

And, later in that same Order, once again, the Order specified that *before* revoking Spot On's LBP status, the Commission may institute an inquiry to examine any alleged failure of Spot On to comply with Lifeline requirements. It is only then, *after* a determination is made that Spot On failed to fulfill those requirements, that the Commission may exercise its authority to revoke Spot On's LBP designation. There, the Order said:

⁵ DA 17-212 (released March 2, 2017).

⁶ 47 U.S.C. § 214.

Finally, we note that the Commission may institute an inquiry on its own motion to examine the Petitioners' records and documentation to ensure that the universal service support they receive is being used for the purpose for which it was intended.⁷ The Petitioners are required to provide such records and documentation to the Commission or USAC upon request. We further emphasize that, if the Petitioners fail to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after they begin receiving universal service support, the Commission may exercise its authority to revoke the Petitioners' LBP designation.⁸ (emphasis added) (at 26)

But, in the instant matter, no such separate proceeding has been commenced. No allegations have been made that Spot On failed to fulfill its Lifeline requirements; and, certainly, Spot On has not had an opportunity to defend such allegations, not knowing what allegations of wrongdoing have been made.^{9,10}

III. THE NTTA PETITION DOES NOT APPLY TO SPOT ON

The petition for reconsideration filed by the National Tribal Telecommunications Association ("NTTA") on January 3, 2017 has nothing to do with Spot On.

As Spot On pointed out in its Application for Review, the NTTA petition for reconsideration was directed only to requesting reconsideration of the December 1st Order of

⁷ 47 U.S.C. §§ 220, 403; 47 CFR § 54.707.

⁸ See *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc. Designations as Eligible Telecommunications Carriers in the Commonwealth of Virginia*, Order on Reconsideration, 19 FCC Rcd 15383, 15385, para. 6 (2012) (citing *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e)).

⁹ In its Comments NARUC asserts (at p. 10) that Spot On "concede(s) the Bureau can revise the LBP petitions deemed granted on January 18 and most of the LBP petitions on December 1." This is a mischaracterization of the Spot On Application for Review. Spot On did not make such concession. The Spot On Application for Review speaks only to the particulars of the Spot On situation and does not address any other applicants for LBP status. Spot On's position is explained in its Application for Review and this Reply Comments.

¹⁰ In its Comments NARUC says (at p.9) that Spot On "concedes, as it must, that the designations can be upended, modified, or placed back in the 'pending category.'" Here, again, NARUC mischaracterizes the Spot On position. Spot On makes no concession whatsoever. What Spot On says is that only *after* the Commission makes a determination that Spot On failed to comply with Lifeline requirements, that the Commission may exercise its authority to revoke Spot On's LBP designation. This is more fully explained in this portion of the Spot On Reply Comments.

those LBP applicants seeking to serve Tribal lands. It should be noted that NTTA, itself, in its Comments filed March 16th in the captioned proceeding confirms this, advising the Commission:

Finally, NTTA's Petition relates only to the LBPs to the extent they proposed to serve Tribal areas. (at 6)

It is important for the Commission to observe the relief requested by NTTA is irrelevant to Spot On. As pointed out in Spot On's Application for Review and confirmed by the December 1st Order, Spot On is not proposing to serve any Tribal lands.¹¹

IV. THE PUBLIC INTEREST FAVORS REVERSAL OF THE ORDER

The public interest, convenience, and necessity favors reversal of the February 3rd Order on Reconsideration.

As explained in the Spot On Application for Review, Chairman Pai forcefully expressed one of the Commission's top priorities is closing the digital divide. Numerous comments filed in the captioned proceeding in support of reversing the revocation of LBP status mirror this same priority.

Of particular and specific importance to Spot On is the Comment filed by Older Adults Technology Services ("OATS"). OATS is a nonprofit organization located in New York City that has helped over 35,000 low-income senior citizens bridge the digital divide since 2004. In 2016, the City of New York invited OATS to join with Spot On to bring the benefits of broadband to the low-income residents of the New York City Housing Authority's Queensbridge multi-tenant residential housing site. (The Queensbridge multi-tenant housing site is the

¹¹ The Public Utility Division of the Oklahoma Corporation Commission ("PUD") filed comments in the captioned matter but in response to a request for reconsideration filed by a coalition of public interest organizations (not to the Application for Review filed by Spot On). PUD's comments do not pertain to Spot On. Such comments are directed at an earlier petition filed by PUD requesting the Commission to hold in abeyance specific targeted applications for LBP designation to serve Oklahoma. But, none of those targeted applications include Spot On. In its comments, PUD says "The basis of PUD's requests to hold these petitions in abeyance was specific to the state of Oklahoma...." (at 4). Spot On's service area does not include any portion of Oklahoma.

location for which Spot On received its LBP designation.) Spot On will provide the broadband connectivity and OATS will provide to residents of Queensbridge intensive training at no cost. Together the lives of the seniors living in Queensbridge will be demonstrably enhanced. As OATS states in its Comments:

Spot On is an invaluable partner in making our transformational work possible among a segment of the population that all informed parties have acknowledged require focused and determined efforts by public-private-nonprofit initiatives to eliminate the digital divide. (at1)

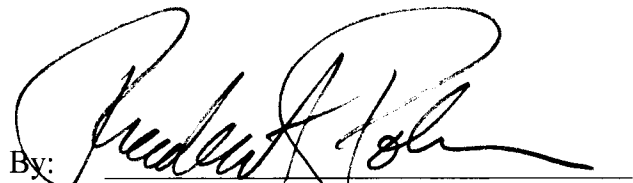
OATS concludes its Comments by urging the Commission to reverse Spot On's LBP revocation in order to help the "many older adults who are struggling to participate in today's digital society."

V. CONCLUSION

For the foregoing reasons, Spot On requests review by the Commission of the actions taken by the February 3rd Order on Reconsideration as they apply to Spot On, viz: (1) setting aside the December 1st Order; (2) revoking Spot On's designation as a LBP; (3) returning Spot On's petition for LBP designation to a pending status; and (4) removing Spot On's petition from streamlined treatment. All of these actions should be reversed as they pertain to Spot On as they are: (a) in conflict with the Communications Act, the Administrative Procedure Act and the Commission's own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law. The public interest, convenience, and necessity will best be served by immediate and full restoration of Spot On's designation as a LBP provider as acknowledged in the December 1st Order.

Respectfully submitted,

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